

**TOWN OF WATERBURY  
DEVELOPMENT REVIEW BOARD  
Approved General Minutes  
December 5, 2013**

Board Members Present: Jeff Larkin, Chair, Martha Staskus, Jeff Whalen, Tom Kinley, Nat Fish, Dave Rogers

Staff Present: Steve Lotspeich, Clare Rock, Patti Spence

**Application #65-13-T, Dotivan Enterprises LLC**, for Site Plan Review, Conditional Use Review (under Section 304 Nonconforming Uses) and Special Flood Hazard Area Review for expansion of retail use at 1675 US RT 2, Waterbury (Tax map # 12-026.000)

See separate hearing minutes.

**DISCUSSION OF Draft Rules of Procedure and Conflict of Interest Policy**  
The updated draft was presented.

**MOTION**

Tom Kinley moved and Nat Fish seconded the motion to accept the Rules of Procedures and Conflict of Interest Policy as presented at this meeting.

VOTE: Passed with 4 in favor and 1 opposed.

**REVIEW OF MINUTES:**

**MOTION:**

Tom Kinley moved and Nat Fish seconded the motion to approve the general minutes of November 21, 2013 and the CVCLT Ladd Hall Findings and Decisions from November 21, 2103.

VOTE: Passed Unanimously.

Jeff Larkin adjourned the meeting at 8:30 p.m.

Minutes Approved:

  
\_\_\_\_\_, Chair

Date: 12-19-13

THESE MINUTES WERE APPROVED ON December 19, 2013.

**TOWN OF WATERBURY  
DEVELOPMENT REVIEW BOARD  
Approved Hearing Minutes  
December 5, 2013**

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Board Members Present: Jeff Larkin, Chair; Martha Staskus; Jeff Whalen; Nat Fish; Tom Kinley; Dave Rogers

Staff Present: Steve Lotspeich, Clare Rock, Patti Spence

Application for Site Plan and Conditional Use for the expansion of a non-conforming use (retail use) at 1675 US RT located within the Medium Density residential Zoning District and the Special Flood Hazard Area Overlay District

Permit Application #:	65-13-T
Applicant:	Dotivan Enterprises LLC
Landowner:	SAME
Location of Project:	1675 US RT, Waterbury, VT

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Applicant present and sworn in: Thomas Sullivan, Property Owner

**EXHIBIT LIST:**

Exhibit A	Zoning Permit Application #65-13-T (including Site Plan and Cond Use Applications)
Exhibit B	Letter from Applicants, dated 10/30/2013
Exhibit C	Current floor plan
Exhibit D	Proposed floor plan
Exhibit E	Parking and farmers market site plan
Exhibit F	Property Survey, dated 4/3/2013
Exhibit G	Planning Commission Decision for previous approval #21-06-T
Exhibit	Notice sent to Adjacent Landowners dated 11/01/13

**Description of Project:**

The applicant is seeking site plan approval for the expansion of the retail use at the Cider House Restaurant Property located at 1675 US RT 2, Waterbury. Under permit # 21-06-T the property is currently permitted for a 125-seat restaurant use with 500 sf of retail space. The applicant is proposing to reduce the restaurant use and expand the retail use within the building and also host a seasonal outdoor market on the lawn, south of the existing parking lot.

Based on the application and exhibits staff presents the following information:

- 1) The property located at 1675 US RT 2 is located within the Medium Density Residential Zoning District and currently is permitted as having 2

- apartment units, a 125-seat restaurant and 500 sf of retail. (Currently the retail area is set up as a banquet room.)
- 2) The restaurant and retail use within the building are prohibited uses within the MDR District and are therefore classified as Non-Conforming Uses and is subject to site plan and conditional use review.
  - 3) Under Section Section 304 Nonconforming Uses and Noncomplying Structures:
    - a. *the Development Review Board may allow a nonconforming use to be changed to another nonconforming use provided that it finds the change to be more in conformance with the district requirements and allowable uses.*
    - b. *A nonconforming use may be extended (see definition of extension of use) within the boundary lines of a parcel or lot existing on the date of this bylaw, or an amendment thereto, with the approval of the Development Review Board and with the granting of all required permits. The Development Review Board must find that a proposed nonconforming use meets the general and specific standards for conditional uses specified in Section 303.*
    - c. The complete excerpt of the Section 304 and Section 303 are listed below
  - 4) No new construction is proposed as part of this project. The existing building footprint will remain the same.
  - 5) The applicant proposes to convert the restaurant's lounge and main dining room to retail space. The restaurant will be downsized and primarily occupied the previously approved retail area which is currently being used as a banquet room.
  - 6) The applicant is also seeking approval to expand the retail use to the garden area (approx. 30'x40') which is located to the south of the parking lot.
  - 7) The outside retail use is proposed as a weekend (Fri-Sunday) seasonal (May – October) farmers market-like vending area.
  - 8) Vehicular access will remain the same, entering the parking area via 2 curb cuts along Route 2 to the gravel parking area.
  - 9) The parking requirement for the current uses is 53 spaces. Under the Waterbury parking requirements restaurants require more parking than retail uses.
  - 10) The interior retail use will be approx. 1,500 sf, and the outside retail area is approx. 1,200sf, totaling 2,700 sf. Under the current regulations 1 parking space is required per every 300 sf of floor area. For 2,700 sf of retail, 9 spaces are required. The outside retail area will include a tent structure.
  - 11) The restaurant will now occupy 500 sf, plus 900sf of patio seating, and have up to 76 seats. There would be 15 employees. The parking requirements would require 40 spaces, 25 for the restaurant and 15 for employees.
  - 12) The parking lot could accommodate up to 78 spaces, which exceeds the minimum amount for the proposed uses.

- 13) The current on site waste water system was designed for the 125-seat restaurant. The proposed use will decrease the current impact on the system.
- 14) Pedestrian access will largely remain the same, foot traffic will enter the building from the porch. Additionally pedestrians will access the outdoor market area via a gate near the deck.
- 15) The property is partially located within the Special Flood Hazard Overlay District where development is required to meet additional standards to decrease flood related damages.
  - a. Based upon a survey of the property the structure and the area identified for the Season farmer market /flea market is located outside the floodplain.

Testimony:

1. No additional lighting is planned for the parking lot.
2. The fence may be removed to allow better access to the back. Shrubs/trees will be thinned and dead trees removed.
3. The restaurant space will be reduced to allow for more retail space.

Section 301 Site Plan Review and Approval

*(f) The DRB will take into consideration the following objectives prior to approval or denial:*

- (1) Adequacy of traffic access. Considerations shall include:*
  - (A) Traffic flows at the intersection of driveways or access roads with public roads and at other affected streets and intersections.*
  - (B) Location of driveway entrances and exits so as to have sufficient sight distances.*
  - (C) The need for turning lanes, traffic-control devices, or special provisions for emergency vehicles.*
  - (D) Pedestrian safety and convenience.*
- (2) Adequacy of circulation and parking. Considerations shall include:*
  - (A) Assurance that the criteria of Section 414 of this bylaw are met.*
  - (B) The need for additional off-street spaces beyond the number required in Section 414.*
  - (C) The adequacy of surfacing and provisions for the runoff and discharge of stormwater.*
  - (D) The provision of appropriate buffer space and landscaping to insulate parking areas from adjoining properties and public streets.*
  - (E) Placement of trees and shrubs around the periphery of parking lots and in the interior so as to break up large parking areas. Large parking lots of 20 or more spaces shall include at least 1 tree for every 8 spaces.*
  - (F) The adequacy of parking, loading, refuse, and service areas.*
  - (G) Provisions for clearing snow for maintaining parking areas.*
- (3) Adequacy of landscaping and screening. Considerations shall include:*
  - (A) Adequacy of landscaping, screening, and setbacks with regard to achieving maximum compatibility with and protection for adjacent properties and public roads.*
  - (B) Preservation of attractive or functional existing vegetation.*
  - (C) The adequacy of landscaping materials to meet seasonal, soil, and topographical conditions.*

- (D) Reduction of lighting and glare to the necessary minimum, including provision of appropriate landscaping to reduce the impact of lighting and glare on adjacent properties
- (E) Screening of unloading zones, trash bins, storage, and other service areas.
- (F) The need for landscaping buffers, fences, or berms to reduce noise.

Section 304                      Nonconforming Uses and Noncomplying Structures

(a) A use made nonconforming or a structure made noncomplying (see definitions) by enactment of this bylaw, or an amendment thereto, may be continued, subject to the following conditions:

(1) Under its power to grant conditional use approval and through that procedure, the Development Review Board may allow a nonconforming use to be changed to another nonconforming use, provided that it finds the change to be more in conformance with the district requirements and allowable uses.

(2) A nonconforming use may be extended (see definition of extension of use) within the boundary lines of a parcel or lot existing on the date of this bylaw, or an amendment thereto, with the approval of the Development Review Board and with the granting of all required permits. The Development Review Board must find that a proposed nonconforming use meets the general and specific standards for conditional uses specified in Section 303.

Section 303                      Conditional Uses

(e) Prior to granting any approval for conditional use, the Board must find that the proposed use conforms to the following general and specific standards:

(1) The proposed use will not have an undue adverse impact on the capacity of existing or planned community facilities to accommodate it. The proposed use:

(A) Will not cause the level of service on roads and highways to fall below a reasonable standard;

(B) Will not cause an unmanageable burden on municipal water or sewer systems;

(C) Will not lead to such additional school enrollments that existing and planned school system capacity is exceeded; and

(D) Will not cause an unmanageable burden on fire protection services.

(E) The Board may seek or require advisory input from the Municipal Manager, Fire Department, Police Department, School Board, or other municipal officials regarding relevant facilities. The Board will also take into account sections of the Municipal Plan and of any duly adopted capital plan which specify anticipated demand growth, service standards, and facility construction plans.

(2) The proposed use will not have an undue adverse impact on the character of the area affected as defined by the Municipal Plan and the zoning district in which the proposed project is located. Specifically, the proposed use:

(A) Will not result in undue water pollution, undue adverse impacts to downstream properties, and will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result; in making this determination, the Board shall at least consider the elevation, the slope of the land, and the nature of soils and subsoils and their ability to adequately support waste disposal;

(B) Will not result in undue noise, light, or air pollution, including offensive odors, dust, smoke, or noxious gasses;

(C) Will not have an undue adverse effect on the scenic or natural beauty of the area, historic sites, or rare and irreplaceable natural areas;

(D) Will not be otherwise inconsistent with existing uses in the immediate area; in determining the appropriateness of the use or structure in an area, the Board shall

consider the scale and design of the proposed use or structure in relation to the scale and design of existing uses and structures in the same district; and  
(E) Will not cause danger of fire, explosion, or electrical hazard, or in any other way jeopardize the health and safety of the area.

(3) The proposed use will not violate any municipal bylaws and ordinances in effect.

(4) The proposed use will comply with the specific lot area, setbacks, and lot coverage requirements set forth in this bylaw. The Board may require the proposed use to conform to more stringent lot area, setback, and lot coverage requirements as it may deem necessary to implement the purposes of the district in which the use is located and other provisions in this bylaw.

## CONCLUSION

Based upon these findings (and subject to the conditions set forth below) the Waterbury Development Review Board concludes that application #65-13-T for Donovan Enterprises LLC for expansion of retail use located with the MDR district and Special Flood Hazard Area Overlay District meets the site plan review in section 301, non-conforming use in 304a1 and a2 and the conditional uses outlined in section 303 (tax map #12-026.000).

On behalf of the Waterbury Development Review Board, Dave Rogers moved and Tom Kinley seconded the motion to approve application #65-13-T with the following conditions:

1. This permit is granted on the condition that the applicant complete the project consistent with the Board's findings and conclusions and the approved plans and exhibits.
2. All exterior lighting will be downcast and shielded.

VOTE: Passed unanimously.

Minutes Approved:

  
\_\_\_\_\_, Chair

Date: 12.19.13

NOTICE: This decision may be appealed to the Vermont Environmental Court by an interested person who participated in the proceeding(s) before the Development Review Board. An appeal must be taken within 30 days of the date of this decision, pursuant to 24 V.S.A. § 4471 and Rule 5(b) of the Vermont Rules for Environmental Court Proceedings.

THESE MINUTES WERE APPROVED ON December 19, 2013